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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,180	03/31/2004	Kiyoshi Miyazaki	52284/DBP/A400	9272
23363	7590	05/04/2005	EXAMINER	
CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			KRAWCZEWICZ MYERS, LOUANNE C	
			ART UNIT	PAPER NUMBER
			1661	
DATE MAILED: 05/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/815,180	MIYAZAKI, KIYOSHI	
	<b>Examiner</b>	<b>Art Unit</b>	
	Louanne C. Krawczewicz Myers	1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on papers filed 3/31/ and 8/16/04.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/31/ and 8/16/04.</u> | 6) <input type="checkbox"/> Other: _____  |

*sek Myers*

## **DETAILED ACTION**

### **Objection to the Drawing**

The following is a quotation of section (a) of 37 CFR 1.165:

(a) Plant patent drawings are not mechanical drawings and should be artistically and competently executed. Figure numbers and reference characters need not be employed unless required by the Examiner. The drawing must disclose all the distinctive characteristics of the plant capable of visual reproduction.

The submitted photographic illustrations filed March 31, 2004 are objected to under 35 CFR 1.165(a) and (b). By way of explanation, the photographic illustrations should not be mounted (37 CFR 1.84(e)). The drawings are objected to under 37 CFR 1.165(b) because applicant has not provided copies of the drawings in duplicate. If the drawings are in color, two color copies of each drawing or photograph are required. Correction is required.

The rules for submitting drawings, 37 CFR 1.84 and 37 CFR 1.165, were amended effective November 29, 2000. The USPTO delayed enforcement of these changes until October 1, 2001. Complete details can be found in the May 22, 2001

*Official Gazette (1246 OG 106-107) or on the Internet at:*

*<http://www.uspto.gov/web/offices/com/sol/og/2001/week21/patwavr.htm>.*

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Objection to the Disclosure

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

**35 USC 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164

(reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

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In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163(a) and under 35 U.S.C. 112 first paragraph, because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More specifically:

A. Page 1, line 3, Applicant states "*crutens*". This is an unrecognized species designation.

It appears applicant may have intended to state --*cruentus*--. Correction and/or clarification are necessary.

B. Page 1, lines 15 and 16, "*Senecio cruentus*" should be italicized or underlined.

Correction to the specification and/or clarification is necessary.

C. Page 1, line 16, Applicant states " 'Cineraria' ". It appears Cineraria may be either a common name or a species designation for the instant plant. Correction to the specification and/or clarification is necessary.

- D. Page 1, lines 17, 28 and 34, Applicant states "flowers". It appears --inflorescences-- may be the more appropriate botanical term to use in these instances. Correction to the specification and/or clarification is necessary.
- E. Page 1, lines 28 and 34, Applicant states "petals". It appears --ray florets-- may be the more appropriate botanical term to use in these instances. Correction to the specification and/or clarification is necessary.
- F. Page 2, line 14 and 15, Applicant states "Plant Pat. No.". It appears that --Plant Patent Number-- would instead be more accurate.
- G. Page 2, lines 29-30, Applicant states that the "new variety is unlike any Senecio commercially available". It appears that --known to the inventor-- should be inserted after "available" since not all varieties of Senecio may be available to Applicant. Correction to the specification and/or clarification is necessary.
- H. Page 2, line 34, Applicant states "flowers". It appears --inflorescences-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

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- I. Page 2, line 34, Applicant states "petals". It appears --ray florets -- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.
- J. Page 2, line 35, Applicant states "disk". It appears --disc floret-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.
- K. Page 3, line 7, Applicant states "flower". It appears --inflorescence-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.
- L. Page 3, lines 22 and 25, Applicant states "disk". It appears -- disc floret-- may be the more appropriate botanical terminology to use in these instances. Correction to the specification and/or clarification is necessary.
- M. Page 3, line 22, Applicant states "petal". It appears --ray floret-- may be more appropriate botanical terminology to use in this instance. Correction to the specification and/or clarification is necessary.

- N. Page 3, line 24, Applicant states "petals". It appears --ray florets-- may be more appropriate botanical terminology to use in this instance. Correction to the specification and/or clarification is necessary.
- O. Page 4, line 10, Applicant states "flowers". It appears --inflorescences--may be more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.
- P. Page 4, lines 23-31, Applicant should set forth in the specification additional information relative to the instant plant's stem/lateral branches including typical and observed length and number of branches per lateral branch.
- Q. Page 4, line 37, Applicant states in the specification that the instant plant's "Degree of undulation. -- Moderate". This recitation is vague as it is unclear what applicant is intending. Correction to the specification and/or clarification is necessary.
- R. Page 4, lines 32-37 and page 5, lines 1 -11, Applicant should set forth in the specification additional information relative to the instant plant's leaf venation including the pattern and coloration with reference to the employed color chart.



- S. Page 5, lines 7 and 8, Applicant states "139D (moderate yellow green)". When compared with the RHS dictionary of Color, 139D is in the "Green" group. Correction to the specification and/or clarification is necessary.
- T. Page 4 lines 32-37 and page 5, lines 1-11, Applicant should set forth in the specification additional information relative to the instant plant's stipules including the typical and observed number per petiole, length, width, apex, base, margin and coloration (both surfaces) with reference to the observed color chart.
- U. Page 5, lines 3 and 4, Applicant should set forth in the specification additional information relative to the instant plant's petioles including coloration with reference to the employed color chart.
- V. Page 5, lines 12, 13, 14, 15, 16 and 18, Applicant states "Flower" or "flower". It appears --Inflorescence-- or --inflorescence-- may be more appropriate botanical term to use in these instances. Correction to the specification and/or clarification is necessary.
- W. Page 5, line 19, Applicant should set forth in the specification additional information with respect to the typical and observed disc floret shape, length,

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diameter, apex, base, and margin descriptors, and coloration for both surfaces with reference to the employed color chart.

- X. Page 5, line 22, Applicant states " disk flower". It appears --disc floret-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.
- Y. Page 5, line 20, Applicant sets forth the "petal" color. However, it is uncertain whether the coloration set forth is for the ray floret upper or lower surface or both surfaces. Applicant should set forth in the specification color designations for the ray floret upper and lower surfaces with reference to the employed color chart.
- Z. Page 5, lines 20, 24, 25, 26, 27, and 28, Applicant states "petal" or "Petal". It appears --ray floret-- or --Ray floret-- may be the more appropriate botanical term to use in these instances. Correction to the specification and/or clarification is necessary.

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- AA. Page 5, lines 24-29, Applicant should set forth in the specification additional information relative to the instant plant's ray florets including the typical and observed ray floret base and margin descriptors and the typical and observed texture.
- BB. Page 5, line 29, Applicant states "ray flowers". It appears --ray florets-- may be more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.
- CC. Page 5, line 30, Applicant states "disk flowers". It appears --disc florets-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary
- DD. Page 5, lines 31 and 32, Applicant should set forth in the specification additional information relative to the instant plant's pedicels including coloration with reference to the employed color chart.
- EE. Page 5, line 33, Applicant states "flowers" or "flower". It appears

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--inflorescences-- or --inflorescence-- may be more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

FF. Page 5, lines 35-37 and page 6, lines 1-7, Applicant should set forth in the specification additional information relative to the instant plant's bracts including bract margin descriptor and number of bracts per inflorescence.

GG. Page 6, line 6, Applicant sets forth a bract color. However, it is uncertain whether the coloration set forth is for the bract upper or lower surface or both surfaces. Applicant should set forth in the specification color designations for the bract upper and lower surfaces with reference to the employed color chart.

HH. Page 6, lines 12- 14, Applicant should set forth in the specification whether the instant plant produces pollen. If the instant plant produces pollen then applicant should set forth the typical and observed amount of pollen produced, such as scarce, moderate or abundant, and its generic coloration. If no pollen is produced, Applicant should simply state in the specification that no pollen is produced.

II. Applicant should set forth in the specification additional information relative to the instant plant's inflorescences including number of inflorescences per lateral stem, number of inflorescences per plant, and typical and observed flowering season including the month.

JJ. Applicants should set forth in the specification the time it takes to produce a flowering plant.

KK. Applicant should set forth in the specification information relative to the instant plant's buds including hardiness, diameter, length, form, surface, and color with reference to the observed color chart.

LL. Applicant should set forth in the specification the lastingness of an -individual bloom, on the plant.

MM. Page 8, line 10 of the Abstract, Applicant states "flowers". It appears --inflorescences-- may be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.

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NN. Page 8, line 11 of the Abstract, Applicant states "petals". It appears --ray florets-- may be the more appropriate botanical term to use in this instance.

Correction to the specification and/or clarification is necessary.

OO. Page 8, line 11 of the Abstract, Applicant states "disk having". It appears --disc florets have a-- may be the more appropriate botanical and grammatical terminology to use in this instance. Correction to the specification and/or clarification is necessary.

PP. Applicant should set forth in the specification the location of the androecium and the gynoecium.

The above listing may not be complete. Applicants should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

Claim Rejection

35 U.S.C. 112, 1<sup>st</sup> and 2<sup>nd</sup> Paragraphs

**Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.**

**Comments**

Due to the amount of revision seen necessary in this application, it is suggested that Applicant file a substitute specification, incorporating all additions, deletions and modifications so as to provide the printer a clean copy at the time of allowance. Applicant should specifically authorize cancellation of the present specification to the same. Further, a clean copy and marked up copy (showing any addition, deletion, and/or modification) of the substitute specification should be submitted. Applicant should note the new amendment format. (Web site stated below).

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtprac.htm>

**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louanne C. Krawczewicz Myers whose telephone number is (571) 272-0979. The examiner can normally be reached on Monday and Thursday from 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (571) 272-0811. The fax phone numbers for the group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the patent electronic business center whose telephone number is (866)-217-9197 (toll free) or (703) 305-3028 or (703) 308-6845 or email requests to [ebc@uspto.gov](mailto:ebc@uspto.gov).

LKM



**KENT BELL  
PRIMARY EXAMINER**

